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ELECTION OF THE LEGISLATIVE COUNCIL

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I here set out the full material bearing on the question.

Election to the Council is held under Article 171.

The members of Council are both elected and nominated,

(a) One third to be elected by the local bodies,

(b) One twelfth by graduates,

(c) One twelfth by educationists,

(d) One third by "members of the Legislative Assembly",

(e) The rest to be nominated by the Governor.

The important question raised is whether the members elected to the Legislative Assembly can elect their one third to the Council without taking the oath under Article 188. My conclusion is that they may elect before taking the oath under Article 188. I considered Article 193 to prescribe penalties for taking part in the conduct of business within the House. It has been pointed out to me that Article 193 in its wording applies to every voting as a member of the Assembly which, voting for Council under Article 171 certainly is.

Such construction has serious difficulties. Take first, the language of the oath or declaration :

> "..............I will faithfully discharge
> the duty *upon which I am about to enter.*"

Just before taking seat and taking part in business, this oath is taken. The next Article 189 prescribes the mode of voting in the House, members sitting together. Article 176 says:

> "At the commencement of every session the Governor shall address the Legislative Assembly....or where both Houses exist both assembled together."

Though that Article has been modified, that was in the original Constitution and the construction must be in the light of that provision. Session is defined by Article 174 as the sitting of the Houses on

summons by the Governor. It is at the first meeting of the elected members on summons that oath is taken. If they take the oath just before sitting in the Assembly and Council at that first summons, how can there be a Council at that first summons at which the Assembly is to take the oath. The Council must have come into existence before the members of the Assembly took the oath. The members of the Assembly are such before taking the oath (see language of Article 188) and have already elected the Council and both Assembly and Council are ready to be called under Article 174 after which they take the oath. Now take Article 193.

> "If a person sits or votes as a member of the Legislative Assembly or Legislative Council.........."

The marginal note is 'sitting *and* voting.' The section uses sits *or* votes for a reason which may be given whether that was present or not to the mind of the Constituent Assembly. Suppose a member does not sit but rushes in when vote is taken. He really sits and votes. The word 'sit' suggests sessions at which a member functions under Article 189.

One may put the question whether the Constituent Assembly could not have said in Article 171 as in the oath 'members elected to the Assembly' but then he may have become disqualified, say, by insolvency or he might have chosen membership under another election and so given up a membership to which also he was elected. The election to the Assembly is not sufficient but the membership must be a continuing one on the date of election under Article 171.

Though the language of Article 193 might suggest a wider construction it ought to be construed in the light of other Articles that I have referred to and in the light of the indication of the marginal note to apply to the conduct of business within the House.

Election under Article 171 is not, in my opinion, intended to be subjected to Article 193 except when he votes after disqualification. To that extent I modify my opinion.

I do not say that the language of Article 171 was incapable of being expressed more precisely. It all comes to saying by way of explanation that the members of the Assembly in Article 171 (3) (d) are those elected and not disqualified subsequently under Article 191. There is another point suggested that taking oath may precede summons under Article 174. There is no provision for summons to elected members merely for taking oath. The legislation proceeds on a well-established practice and a construction which can be maintained only by ignoring such practice must be supported by something more explicit than anything that exists. Here again the language of the oath indicates that the oath is taken at the first session of the Houses by members of both Houses.